

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

The Telephone Consumer
Protection Act of 1991

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CC Docket No. 92-90

COMMENTS OF OLAN MILLS, INC.

Olan Mills, Inc. ("Olan Mills"), by its attorneys, hereby submits its comments on the Petitions for Clarification and Reconsideration in the above-captioned proceeding. In general, Olan Mills believes that the new rules adopted by the Commission accurately balance the need to protect residential telephone subscribers from unwanted solicitations, while not unduly burdening companies from conducting legitimate business activities. Olan Mills has concerns, however, regarding the Commission's requirement that telemarketers maintain their do-not-call lists on a permanent basis. Such a requirement will only serve to confuse telephone subscribers and will deny many consumers the statutorily granted right to choose the solicitations they want to receive by objecting to the solicitations they want to avoid¹. Olan Mills believes that a more rational approach would be for the Commission to require telemarketers

¹ Sec. 227(c)(1), Communications Act of 1934, 47 U.S.C. 201 et seq.).

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to maintain their do-not-call lists for five years, as proposed by the Direct Marketing Association ("DMA").²

I. THE COMMISSION SHOULD REQUIRE THAT DO-NOT-CALL LISTS BE MAINTAINED FOR A PERIOD OF FIVE YEARS

As discussed in its comments, Olan Mills developed its own in-house do-not-call system more than 15 years ago. In its original form, the system, which currently contains 440,000 names, ensures that a customer will not be contacted again for a minimum of two years. The Commission has determined, however, that do-not call lists must be retained "on a permanent basis."³ The Commission believes that such a policy is necessary to eliminate the need for consumers to renew periodically their do-not-call ("DNC") requests. In addition, the Commission believes that such a requirement may protect consumers from being burdened with calls from telemarketers inquiring as to whether consumers wish to retain their DNC status. Olan Mills believes that requiring DNC lists to be maintained on a permanent basis will mislead and confuse consumers. Furthermore, the Commission's mandate will have the unintended effect of denying many consumers the opportunity to choose the solicitations they want to avoid

² While DMA's Petition refers to keeping "names" on a permanent basis, Olan Mills' believes that the intent of the DMA is that the DNC list should be maintained for five years, regardless of whether the list is kept by name or telephone number.

³ Report and Order at 15.

receiving. Finally, contrary to the Commission's expectations, a permanent DNC list may encourage telemarketers to make non-solicitation calls to consumers in an effort to delete obsolete numbers from the DNC list.

Requiring DNC lists to be maintained on a permanent basis will lead consumers to believe that they will never be contacted again by a particular company, regardless of the circumstances. In some cases, however, such an assumption is clearly incorrect. As demonstrated by DMA in its comments, up to 18 percent of the population changes residences on a yearly basis.⁴ Obviously, many of these consumers will obtain a new telephone number from their local telephone company. Telemarketers, however, will have no way of knowing that a consumer -- whose name and telephone number previously appeared on the DNC list -- has changed his telephone number. Thus, this consumer may inadvertently be contacted by the telemarketer because the new number will not appear on the company's DNC list.

No doubt such a solicitation will only serve to anger and confuse consumers. Telephone subscribers will be led to believe that they have permanently discontinued solicitations from a company by requesting DNC status. Many consumers will simply not realize that they need to renew their DNC request after a change of their telephone number occurs.

⁴ See Comments of Direct Marketing Association at 22.

A permanent DNC list will also have the unintended effect of restricting telephone solicitations to consumers who never chose to be placed on the DNC list. When a consumer requests residential telephone service, the telephone company often furnishes a number that was previously assigned to another subscriber. Because most companies will probably maintain their DNC lists on a number -- rather than name -- basis, the number will remain on the DNC list regardless of its ownership. Thus, consumers who never made a conscious decision to discontinue telephone solicitations from a particular company nevertheless will be effectively barred from receiving such calls. Even if a company maintains its list on a name basis, the company will not know -- unless contacted by the subscriber -- that he or she has obtained a new telephone number. In other words, consumers will be bound by the decisions made by the previous telephone number owner.

Indeed, it would seem that taking such choice away from the consumer is directly contrary to Congress' intent. One of the goals of the Telephone Consumer Protection Act was to promote consumer choice. The Commission's requirement that DNC lists be maintained on a permanent basis will clearly negate choice by consumers who obtain telephone numbers that have been placed on a DNC list by a previous owner.

Furthermore, the Commission's requirement that DNC lists be maintained on a permanent basis may actually force companies to periodically contact consumers on the do-not-call list, rather than preventing such calls. Under Olan Mills' original system, the company has never queried these consumers as to whether they desire to maintain their do-not-call status. Indeed, the primary purpose of telephone contact with consumers should be to inform them of the company's services, not to "poll" them on their receptivity to telephone solicitations in general. However, if companies do not attempt to communicate with subscribers from time to time, they will have no way of knowing whether the number is still in service, and if it still belongs to the subscriber who originally made the DNC request. Indeed, without such periodic contact, a great majority of telephone numbers could mistakenly end up on DNC lists by the sheer fact that consumers did not notify the company when they changed telephone numbers. In time, the business generated through telemarketing, which Congress recognized as totaling \$435 billion in 1990, could be constricted by the growing number of "dead" numbers on the DNC list.

Finally, maintaining the DNC list on a permanent basis will no doubt result in significant burdens on telemarketers, in contravention to Congress' desire to minimize such burdens on legitimate business activities. As discussed infra,

companies will need to periodically review their DNC list in order to determine whether any change in status has taken place. These additional calls will result in additional costs to telemarketers, which will eventually be passed on to consumers in the form of higher prices for goods and services.

Olan Mills urges the Commission to carefully consider DMA's proposal that the DNC list be maintained for five years. The company believes that this period strikes a fair balance between a telephone subscriber's privacy rights and a company's ability to market its products and services to consumers. Furthermore, a five-year period will allow the Commission to accomplish its statutory objectives without placing unreasonable burdens and costs on telemarketers.

Respectfully submitted,

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January 4, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 1993,
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